

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

ASHTON JAMARR PHILIP,)
Plaintiff,)
v.) No. 23-cv-1229-SHM-tmp
TRICOR,)
Defendant.)

ORDER GRANTING LEAVE TO PROCEED *IN FORMA PAUPERIS*
ASSESSING THE \$350.00 FILING IN ACCORDANCE WITH THE PLRA

On October 25, 2023, Plaintiff Ashton Jamarr Philip, who is incarcerated at the Northwest Correctional Complex in Tiptonville, Tennessee, filed a *pro se* complaint pursuant to 42 U.S.C. § 1983, and a motion to proceed *in forma pauperis*. (ECF Nos. 1 & 2.) However, Plaintiff neglected to either pay the civil filing fee or submit a copy of his trust account statement as required by 28 U.S.C. §§ 1915(a)-(b). Therefore, the Court issued an order on October 30, 2023, directing Plaintiff to either pay the entire filing fee or submit a copy of his inmate trust account statement for the last six months. (ECF No. 4.)

The Plaintiff complied with the order by submitting his certified inmate trust fund account balance on November 1, 2023. (ECF No. 5.) The undersigned is entering this order pursuant to Administrative Order 2023-30.

Under the PLRA, a prisoner bringing a civil action must pay the filing fee required by 28 U.S.C. § 1914(a). Although the obligation to pay the fee accrues at the moment the case is filed, *McGore v. Wrigglesworth*, 114 F.3d 601, 605 (6th Cir. 1997), partially overruled on other grounds by *LaFountain v. Harry*, 716 F.3d 944, 951 (6th Cir. 2013), the PLRA provides the

prisoner the opportunity to make a “down payment” of a partial filing fee and pay the remainder in installments. *Id.* At 604. In this case, Plaintiff has now submitted a properly completed *in forma pauperis* affidavit and a copy of his inmate trust account statement. The motion to proceed *in forma pauperis* is GRANTED in accordance with the terms of the PLRA.

Pursuant to 28 U.S.C. § 1915(b)(1), it is ORDERED that Plaintiff cooperate fully with prison officials in carrying out this order. It is further ORDERED that the trust fund officer at Plaintiff’s prison shall calculate a partial initial filing fee equal to twenty percent (20%) of the greater of the average balance in or deposits to Plaintiff’s trust fund account for the six months immediately preceding the completion of the affidavit. When the account contains any funds, the trust fund officer shall collect them and pay them directly to the Clerk of the Court. If the funds in Plaintiff’s account are insufficient to pay the full amount of the initial partial filing fee, the prison official is instructed to withdraw all of the funds in the Plaintiff’s account and forward them to the Clerk of the Court.

On each occasion that funds are subsequently credited to Plaintiff’s account, the prison official shall immediately withdraw those funds and forward them to the Clerk of Court, until the initial filing fee is paid in full.

It is further ORDERED that after the initial partial filing fee is fully paid, the trust fund officer shall withdraw from Plaintiff’s account and pay to the Clerk of this Court monthly payments equal to twenty percent (20%) of all deposits credited to Plaintiff’s account during the preceding month, but only when the amount in the account exceeds \$10, until the entire \$350 filing fee is paid.

Each time the trust fund officer makes a payment to the Court as required by this order, he shall print a copy of the prisoner’s account statement showing all activity in the account since

the last payment under this order and submit it to the Clerk along with the payment. All payments and accounts statements shall be sent to:

Clerk, United States District Court, Western District of Tennessee
167 North Main, Ste. 242, Memphis, TN 38103

and shall clearly identify Plaintiff's name and the case number as included on the first page of this order.

If Plaintiff is transferred to a different prison or released, he is ORDERED to notify the Court immediately, in writing, of his change of address. If still confined, he shall provide the officials at the new facility with a copy of this order. If Plaintiff fails to abide by these or any other requirements of this order, the Court may impose appropriate sanctions, up to and including dismissal of this action, without any additional notice or hearing by the Court.

The Clerk shall mail a copy of this order to the prison official in charge of prison trust accounts at the Plaintiff's prison. The Clerk is further ORDERED to forward a copy of this order to the warden of the prison to ensure that the custodian of Plaintiff's inmate trust account complies with that portion of the PLRA pertaining to the payment of filing fees.

IT IS SO ORDERED, this 7th day of November, 2023.

s/Tu M. Pham

TU M. PHAM

CHIEF UNITED STATES MAGISTRATE JUDGE